

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A CEASE AND)
DESIST ORDER ISSUED BY THE)
DEPARTMENT OF ECOLOGY TO JOHN)
A. AND ESTHER NELSON)
JOHN A. NELSON,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF Ecology,)
Respondent,)
LLOYD F. FULLER AND)
MARGARET C. FULLER,)
Intervenors.)

PCHB No. 79-32
ORDER DISMISSING APPEAL
FOR LACK OF JURISDICTION

This matter, the appeal of a Department of Ecology shoreline regulatory order issued under WAC 173-14-180, came on for hearing before the Pollution Control Hearings Board Dave J. Mooney, Chairman, Chris Smith and David Akana convened at Seattle, Washington on April 27, 1979. The hearing was continued, resuming on May 3 and concluding

1 or May 4, 1979. Hearing examiner William A. Harrison presided.

2 Appellant John A. Nelson appeared by his attorney, Stephen S.
3 Bassett. Respondent, Department of Ecology, appeared by
4 Robert V. Jensen, Assistant Attorney General. Intervenor,
5 Lloyd F. and Margaret C. Fuller, appeared by their attorney, Stephen
6 J. Crane. Reporters Jamie R. Dean and Mark Horila recorded the
7 proceedings.

8 Having raised the issue of its jurisdiction over appeals from
9 regulatory orders issued under WAC 173-14-180, the Pollution Control
10 Hearings Board concludes that it lacks jurisdiction to hear such
11 appeals.

12 RCW 43.21B.110 provides that the Pollution Control Hearings
13 Board has jurisdiction:

14 ". . . to hear and decide appeals from the
15 decisions of the department . . . the hearings
16 board shall also have jurisdiction to hear and
decide appeals from any person aggrieved by an
order issued by the department . . ."

17 This provision, effective July 1, 1970, predates the Shoreline
18 Management Act, chapter 90.58 RCW, effective June 1, 1971. The
19 Shoreline Management Act provides a full scheme for enforcement and
20 adjudication of that Act. See Nelson v. Department of Ecology and
21 Fuller, SFB No. 79-11, issued contemporaneously with this Order.
22 There is nothing left for the Pollution Control Hearings Board
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26 ORDER DISMISSING
27 APPEAL FOR LACK
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1 under the Shoreline Management Act.

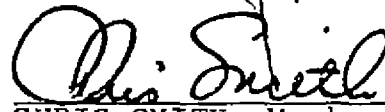
2 We conclude from this that where Department of Ecology issues
3 an order exclusively under the Shoreline Management Act, such as
4 the regulatory order under WAC 173-14-180 here, there is
5 no jurisdiction in the Pollution Control Hearings Board to review
6 it.

7 The Pollution Control Hearings Board therefore dismisses this
8 matter for lack of jurisdiction.

9 DONE at Lacey, Washington this 11th day of June, 1979.

10 POLLUTION CONTROL HEARINGS BOARD

11 
12 DAVE J. MOONEY, Chairman

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14 CHRIS SMITH, Member

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16 DAVID AKANA, Member

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26 ORDER DISMISSING APPEAL
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CERTIFICATION OF MAILING

I, LaPene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 12th day of June, 1979, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

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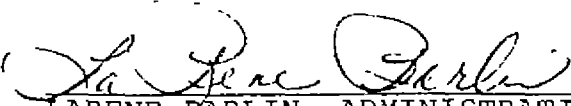
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SHORELINES HEARINGS BOARD

ORDER DISMISSING
FOR LACK OF JURISDICTION